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WORK-LIFE BALANCE IN ITALY PRE-, DURING AND POST-COVID-19*

Abstract

The COVID-19 pandemic is bringing immense pressure to bear on labour law and social security institutions in all countries of the world, while having a major impact on work-life balance. The total lockdown, also of schools and higher education, the unprecedented fall in the level of production, the reduced possibility of relying on other family members, friends and domestic workers, traditionally constituting the essential pillars of formal and informal caring, in addition to working from home with children doing their schooling online (in large part on the parents' shoulders) have compelled families to face new and abrupt organizational changes. The aim of this article is to investigate the legislative measures such as parental leave (ordinary and emergency) adopted in Italy aimed at supporting families during the pandemic, with a view to assessing their effectiveness and the impact on the Italian labour market during and after the pandemic. For this purpose, the socio-economic and legal framework dealing with parental leave before the COVID-19 emergency will be outlined, followed an the analysis of the emergency measures to provide support for parents, concluding with some reflections on possible future developments.

Słowa kluczowe: urlop macierzyński, urlop ojcowski, urlop dla osób z niepełnosprawnościami, nadzwyczajny urlop, obowiązki opieki, premia, równoważenie obowiązków zawodowych i osobistych, środki nadzwyczajne związane z COVID-19, prawodawstwo nadzwyczajne

Keywords: maternity leave, paternity leave, parental leave, disability leave, extraordinary leave, care responsibilities, bonus, work-life balance, COVID-19 emergency measures, emergency legislation

ASJC: 3308, JEL: K31

1. Introduction

Italy has traditionally been characterized by a male breadwinner model in which childcare and related duties are primarily the responsibility of the mother. This is one of the main

* I wish to extend my thanks to William Bromwich for kindly agreeing to copy-edit this paper in linguistic terms.

reasons for the gender inequality reflected in the female employment rate (56.2% in Italy compared to the European average of 67% in 2018)¹ and wage differentials. According to the Global Gender Gap report, Italy is ranked out 76 of 153 countries in this respect.²

In recent decades as a result of the more active female participation in the labour market, the emancipation of women, and the lack of economic sustainability of the single breadwinner model, in addition to attempts to overcome gender stereotypes, this model has eroded in favour of a dual breadwinner model with a more equal sharing of family responsibilities. However, due to the strong cultural bias, especially in Southern Italy, the conservative and change-resistant institutional and political framework largely embedded in the male-breadwinner concept and “traditional family” values as well as the lack of popular support and cross-party consensus, Italy has witnessed a modest weakening of this model compared to many other European countries (Della Puppa, Miele 2015; Daiger von Gleichen, Seeleib Keiser 2018; Martone 2019).

According to the ISTAT data for 2018 (Italian National Institute of Statistics), 34.6% (12,746,000) of persons aged between 18–64 years have to take care of family members, of which 650,000 have to care both for children and other family members with care needs. Among these persons only about one-third use the services while 38% count on the support of family or friends. Care responsibilities are still mainly assumed by women and this has negative repercussions on their labour market participation. The employment rate of men aged 25–54 years with children is around 89.3% while for men without children it is 83.6%. The situation is strikingly different for women: in the same age range only 57% of women with children are employed, compared with 72.1% of women without children.³

According to the recent Viking survey⁴ more than one half of women workers encounter obstacles in their career as a result of maternity. The survey found that 53% of the respondents would prefer to turn down a wage increase in exchange for better working conditions, including parental leave or flexible working arrangements. The research confirms that 56% of women encountered obstacles at work in relation to maternity, and 29% of women postponed the decision to have a child while 16% chose not to have a child at all for fear of losing their job, leading to declining fertility rates. In addition, 81% of women would like better conciliation policies including longer paternity leave and more support for new parents. Men would also prefer more generous paternity leave (73% among the couples interviewed). In general only one in ten women is satisfied with the Italian system of parental leave, while 91% would prefer another model like the Norwegian one (65% in favour) with 45 weeks of paid leave for the mother and 10 weeks for the father.⁵

¹ Istat, report of 18 November 2019.

² Global Gender Gap Report 2020, World Economic Forum, http://www3.weforum.org/docs/WEF_GGGR_2020.pdf (access: 1 June 2020).

³ Istat, report of 18 November 2019.

⁴ <https://www.pmi.it/economia/lavoro/333459/conciliazione-vita-lavoro-la-lezione-del-coronavirus.html> (access: 22 May 2020). The survey focused on women aged 25–45 years.

⁵ *Ibidem*.

2. Pre-COVID-19. Legislative framework

Italy has never ratified the ILO Workers with Family Responsibilities Convention No. 156 of 1981 though as a member of the European Union it has had to comply with the respective European directives.⁶

The main legislative provisions relating to maternity and paternity are to be found in Legislative Decree No. 151, of 25 March 2001, Consolidated Act on the Protection and Support of Maternity and Paternity (*Testo Unico sulla maternità e paternità*), which represents a systematic and updated collection of various provisions deriving to a large extent from legislative acts and Constitutional Court rulings (Gottardi 2016). Since it was first enacted, the Act has been mainly focused of salaried workers. However, even if the general structure has remained more or less unchanged, in the last two decades it has been subject to some important changes reflecting a gradual shift from a focus on the protection of maternity towards more wide-ranging and inclusive family and welfare policies. In particular, recent reforms have promoted a more gender-neutral approach towards workers entitled to legal protection and economic benefits in relation to care which may be regarded as indicative of the gradual shift away from the previous male-centric conception (Martone 2019, p. 452).

In the following sections we provide a brief overview of the legal regulation of the main categories of leave for care in Italy and analyse the changes introduced in relation to the COVID-19 pandemic.

2.1. Maternity leave

Women in Italy are entitled to 20 weeks of compulsory leave and are paid at least 80% of their regular wage which may be increased to 100% by collective agreements. Although the Italian legislation is not among the most generous,⁷ it complies with the European requirements. Until recently this leave could be taken from two months (or one month) before the expected date of delivery with three (or four) months after. Due to an amendment introduced in January 2019, expectant mothers may opt to work until the day of the delivery and then take five months of maternity leave after childbirth provided there are no objections from the medical practitioners.⁸

In addition, within the first 12 months of the birth of the child, mothers can take two-hour daily breaks for breastfeeding during the workday, or one hour if their working day

⁶ In particular, among the most significant in this regard are: Council Directives 92/85/EEC; 96/34/EC; 2010/18/EU. The recent directive 2019/1158 on work-life balance for parents and carers repealing Council Directive 2010/18/EU should be transposed by Member States by 2 August 2022. Under Art. 20(2) of the Directive the term is prolonged until 2 August 2024 in relation to the payment or allowance corresponding to the last two weeks of parental leave as provided for in Art. 8(3).

⁷ According to UNICEF report Italy ranked No. 19 among 41 selected countries of the EU and OECD. See Chzhen, Gromada, Rees 2019.

⁸ Budget Law for 2019 (Act No. 145/2018).

is less than six hours. It is prohibited to dismiss female employees during pregnancy and until the child is one year old except in special circumstances.⁹ This regulation covers all women who are subordinate workers including public employees and private-sector workers, quasi-subordinate workers, apprentices and cooperative members.

2.2. Paternity Leave

Paternity leave is granted to the father in relation to the birth or adoption of a child. Since the very beginning paternity leave has had difficulty establishing itself in the Italian legislation. Until recently it did not have an autonomous status as it depended on the incapacity or impossibility of the mother or her decision not to take parental leave.¹⁰

Due to the positive European developments in this regard, the duration of paternal leave in Italy has been gradually extended over the last decade, though it still lags behind many European countries. The most significant changes (in relative terms) were introduced by the Fornero reform¹¹ (2012) establishing one day of mandatory leave and two days of optional leave to be used in the first five months of the child's life (Art. 4). Legislative Decree No. 80/2015¹² granted the father the possibility to request paternity leave also in cases in which the mother is self-employed. In 2019 under the Budget Act,¹³ the father was granted five days of mandatory paid leave and one optional day of leave to be taken during the first five months after the birth. In 2020 with the subsequent Budget Act¹⁴ the number of days was increased again to seven days of obligatory leave. In future Italy will be required to comply with the provisions of the recent European directive 1158/2019 establishing 10 days of mandatory paternity leave paid at least at the same rate as sickness allowance (Art. 8(2) of the Directive) and which may be subject to the father having been employed for six months immediately prior to the expected date of the birth.

In spite of the importance of these legislative provisions recognizing the independent status of paternity leave in Italy, only a small number of fathers opt to take this leave. The reasons are many and include *inter alia* higher male salaries so often the decision about maternity leave is dictated by merely economic considerations. The other reasons are linked to the possible negative attitude of the employer and other employees on the decision of the father to take the leave, along with the fear of losing his job (more widespread in the private sector than in the public sector where more protection

⁹ Legislative Decree 26 March 2001, Consolidated Laws on the Protection and Support of Maternity and Paternity, Art. 22, 32, 34, 54; Legislative Decree 15 June 2015, No. 80, Art. 7.

¹⁰ Fathers may take three months paid leave after the birth of a child in case of the mother's death or serious illness, when the mother abandons the child, or the father is the sole carer. See art. 28 § 1 of Legislative Decree No. 151/2001.

¹¹ Act No. 92, 28 June 2012.

¹² This decree is part of a series of the decrees implementing the Jobs Act, Act No. 183 of 2014.

¹³ Budget Act 2019, of 30 December 2018, No. 145, Art. 1 § 278.

¹⁴ Budget Act 2020, 27 December 2019, No. 160, Art. 1 § 342.

is provided). For the same reason, men in stable employment are more inclined to take paternity leave than those in precarious employment. Other important factors are the level of remuneration and flexibility of the use of such leave, and in particular persistent cultural stereotypes according to which caring is regarded as an exclusively female concern, and last but not least a lack of available information about access to paternity leave.

2.3. Parental leave

Parental leave is aimed at ensuring the presence of the parents in the child's life during the first years of life and is regulated by Art. 32 of Legislative Decree No. 151/2001. Both parents are entitled to take parental leave for up to six months each (with an overall limit of 10 months in all) during the first 12 years of the child's life on 30% pay.¹⁵ To provide greater incentives for fathers, if the father takes at least three months the overall limit is 11 months (one month more). This type of leave can also be taken by both parents at the same time. Act No. 80/2015 raised the age threshold for the eligibility for this leave from 8 to 12 years and extended the protection also for self-employed workers. In addition, it made provision for the possibility to use this leave in a flexible hourly-based way (not the entire day as before). Unemployed and domestic workers are excluded from these provisions.

2.4. Extraordinary leave in case of children with disabilities

The law lays down the possibility to extend parental leave for a maximum period of three years in favour of both parents in case of a child with a severe disability up to the age of 12 years¹⁶ on condition the child is not admitted to hospital on a full-time basis.¹⁷ In this period parents are entitled to 30% of their salary. Moreover, they are entitled to a special fully paid leave for a maximum of two years over the entire working life,¹⁸ which can be taken only on a daily basis (not on an hourly basis). In addition, parents of a child with a disability younger than three years are entitled to daily permits of two hours (on full pay) in cases in which they work more than six hours a day, and one hour in cases in which their working day is less than six hours. After the child reaches the age of three, they have the right to three days off per month (which may be taken on an hourly basis) to take care of the child on 100% pay.¹⁹ This leave must be taken within the current month and cannot be carried over to the next month. In cases in which the beneficiary does not take the leave, it is lost.

¹⁵ The Decree 81/2015 increased the age threshold from 8 to 12, extended protection also to self-employed workers and increased the eligibility for parental leave to the age of 12 (compared to the age of eight previously).

¹⁶ Legislative Decree No. 151, 26 March 2001, Art. 33.

¹⁷ Unless the parents' presence is required for medical reasons.

¹⁸ Act No. 104, 5 February 1992, Art. 3 § 3.

¹⁹ Act No. 104, 5 February 1992, Art. 33 § 3 and Art. 33 Legislative Decree No. 15, 26 March 2001, Art 33.

3. Post-COVID emergency legislation

Italy was among the first and mostly severe affected countries in Europe by the COVID-19 pandemic. In response to this extreme situation the government enacted a series of measures to help workers deal with increased family responsibilities and economic difficulties due to the closure of educational institutions from 5 March 2020.²⁰ Government legislation was then supplemented by regional legislation and numerous provisions of an explanatory nature issued by the public institutions. For the scope of this paper we will consider the main legislative acts such as *Cura Italia*²¹ and *Rilancio Decree*²² and the main innovations introduced in relation to parental leave and leave for people with disabilities.

3.1. Extraordinary parental leave

During the pandemic the most widespread measures as an alternative to dismissal were paid and unpaid holidays, leave and permissions as well as flexible working arrangements (most widely adopted for public servants for whom it is to be considered an ordinary way of working).²³ In light of the emergency some traditional institutions such as parental leave were strengthened in a special way.

In particular, Art. 23 of the *Cura Italia* Decree specified the provisions for extraordinary parental leave up to 15 days in the period from 5 March to 3 April 2020,²⁴ which can be taken even when ordinary parental leave has already been taken. This emergency leave provided for the payment of 50% of the normal salary for families with children under 12 years, while no provision was made for payment in the case of families with children between 12 and 16 years.

In spite of the gradual easing of lockdown measures, the *Rilancio* Decree extended the support measures for several more months (Art. 72) granting a maximum of 30 days of extraordinary parental leave to be taken by 31 July on a continuous basis or as separate periods of leave. Workers who have already taken 15 days of leave are permitted to take the remaining 15 days. The leave is always paid at a rate of 50% in the case of families with children up to the age of 12. The *Rilancio* Decree provided that unpaid leave could be taken by parents with children up to the age of 16, eliminating the exclusion for children between 12–16 years. Pursuant to Act No. 77, 17 July 2020 transposing the *Rilancio* Decree, the possibility to take extraordinary leave was prolonged until 31 August considering the initial maximum limit of 30 days within the entire emergency period. Unlike its predecessor, this leave can be taken on an hourly basis

²⁰ DPCM (Decree of the President of the Council of Ministers) 4 March 2020.

²¹ Legislative Decree No. 18, 17 March 2020 (*Cura Italia*) converted into Act No. 27, 24 April 2020.

²² Decree No. 34, 19 May 2020.

²³ Circular No. 2 of the Ministry of Public Administration of 1 April 2020, states that smart working will represent the ordinary modality of working up to the end of the emergency.

²⁴ New decrees were to be issued periodically on a two-weekly basis depending on the pandemic.

and can be used in a retroactive way (starting from 19 July 2020 when the respective provision came into force). These provisions provide more extensive financial aid compared to ordinary leave as specified in Legislative Decree No. 151/2001.²⁵ In addition, during this period these workers are protected from dismissal as they have the right to keep their jobs. This opportunity may be taken by both parents on condition that it is not contemporary and neither of the parents is in receipt of alternative means of wage support such as the Wage Guarantee Fund, and neither is unemployed or currently not working. Employees working from home can also benefit from this leave. Individuals entitled to this leave include workers in the private sector, public employees, freelance workers required to make separate social insurance contributions to INPS, and self-employed workers enrolled with INPS. In particular, the latter two categories of workers are subject to different economic conditions. They are entitled to 50% of 1/365 of the income determined as a basis of the calculation for the maternity allowance. For self-employed workers enrolled with INPS this allowance is commensurate to 50% of the daily conventional salary determined on an annual basis by law according to the category of self-employment.

Special protection is granted to workers looking after family members with a disability (or disabled individuals), duly certified pursuant to Act No. 104/1992. These measures, specified in Art. 24 of the above-mentioned Legislative Decree No. 18/2020, include an additional twelve days of fully paid leave to be taken in March and April, to be distributed at the worker's discretion, in addition to three days per month already provided by law (which is limited to the current month and cannot be carried forward to the following months).²⁶ The *Rilancio* Decree (Art. 73) extends this period up to a further 12 days to be taken in an identical manner between May and June. These periods of leave may also be taken on an hourly basis.²⁷

Clearly these emergency provisions for leave are only of a temporary nature so it is difficult to assess their role in improving work-life balance. From the technical point of view these measures are intended to offset the lack of public and private educational and care services and provide economic support to workers and enterprises. If we consider parental leave as an individual provision designed primarily to dedicate time to children or personal interests, the COVID-19 leave could be characterized as an extraordinary measure intended as a lifeline. Also the two different types of leave are distinctive. While ordinary parental leave is an individual right which is granted for each child to the mother and father and may be used with both parents at home at the same time, COVID leave is granted to the family regardless of the number of children, and the parents are required to use it alternatively (Calafà 2020). If on the one hand it is

²⁵ See § 2.1.C *supra*.

²⁶ In this way the disabled worker or carer of disabled persons has a right to 18 days (3+3+12) for the months of March and April.

²⁷ The INPS Circular No. 45/2020 provided detailed administrative clarification on how to use the extraordinary leave and extended permits for people with disabilities following the adoption of the *Cura Italia* Decree. Circular No. 81 of 8 July specifies the procedure after the enactment of the *Rilancio* Decree.

gender-neutral, on the other hand there is no additional incentive to encourage fathers to take it as in the case of ordinary parental leave.

3.2. Monetary allowances

As an alternative to parental leave, parents are entitled to a voucher for child-minding services ranging from 600 to 1000 euros (for medical personnel)²⁸ as specified in Art. 23 and 25 of Legislative Decree 18/2020. The *Rilancio* Decree (Art. 75) increases these amounts respectively to 1200 and 2000 euros. The logic is the same as in the case of parental leave. Those who have already received a bonus of 600 euros (or 1000 euros) may request the additional 600 euros (1000 euros) by the end of August. In addition to the *Cura Italia* Decree, the most recent Decree envisages the use of these funds to cover the enrolment fees for summer camps and other educational and recreational services for children. The latest amendment to the *Rilancio* Decree introduced the possibility to use this bonus to pay grandparents or other relatives and friends who care for the children on condition they do not co-habit with the family.²⁹ The age limit of the child is 12 years (except for disabled children for whom no age limit is laid down). The amount is a fixed one and does not depend on the number of children.³⁰ Unlike the provisions for parental leave, also self-employed workers not registered with INPS are entitled to benefit from this measure.

4. Conclusion

Arguably the emergency measures are in a state of flux following the developments of COVID-19 so it is difficult to make any reliable forecast for the future. From the analysis of the measures adopted it is evident that the legislator integrated the existing system of parental and disability leave, expanding it and providing additional economic support. The negative aspects include the complex nature of the emergency legislation which, considering the complicated legal framework, has given rise to a certain amount of uncertainty. In addition to the legislative acts, there are numerous explanatory notes such as circulars periodically published by the social insurance institutions that do not repeal the previous provisions but integrate them. This does not facilitate understanding not only on the part of the general public with no legal training, but also on the part of legal experts, not to mention the administrative staff and employees of call centers who are required to answer numerous queries. Moreover, many emergency measures are not coordinated with other norms, including “ordinary” norms. Their interpretation is further aggravated by the application of the principle

²⁸ Specified in Art. 23, § 3 of Act 18/2020.

²⁹ INPS Circular No. 73/2020 of 17 June 2020.

³⁰ The respective administrative explanations are provided in INPS Circular No. 44/2020.

of retroactivity and the need to verify compatibility of various institutions (like bonuses for baby-sitting and smart working, ordinary and extraordinary parental leave and disability leave). The situation then becomes even more complicated as the levels of benefits and degree of legal protection is commensurate with the legal status of the applicants (salaried workers, self-employed workers, or domestic, public or private, belonging to special sectors or not, presence of a family member who is entitled to other forms of state support or not). Last but not the least, employees dealing with these applications must also face the problem of the suspension of many services such as the panel of experts for the assessment of the state of disability of individuals whose disability certificates expired during the COVID-19 emergency, or immigrants whose residence permit or visa has expired. As a result, administrative bodies have a double workload dealing with their ordinary caseload, the emergency caseload and the complications of applying the new measures. If we consider that most of them have to perform their duties by means of smart working or teleworking from home (in some cases not having the necessary equipment or information or experiencing difficulties with children or other members of the family in need of care) it is easy to understand the delay in dealing with the applications and the fact that for some families in need the consequences may be extremely serious. In this light it seems essential to simplify and coordinate the existing normative framework providing at least minimum essential assistance for all categories of workers.

The second point concerns the gender impact of the measures taken in response to COVID-19. During the pandemic women have been especially affected by the increased workload (at home and at work). Although many fathers now share domestic and care obligations, they are still less involved in such concerns. A two- or three-month lockdown is certainly insufficient to break ingrained habits but it may be sufficient to rethink approaches to paternity and parental leave to provide greater incentives for fathers to share family responsibilities. The same considerations may be applied to maternity and parental leave the duration and economic conditions of which could be improved following the best European practices and world-class performers.³¹

It is clear that emergency preparedness requires additional financial resources. It is also evident that in the light of the financial burden it is difficult to provide support only at the state level so collective bargaining should be encouraged to provide additional benefits for employees.

To sum up, the impact of COVID-19 emergency measures on work-life balance is a highly controversial issue and the outcome is still unclear as there is no certainty about the duration of the state of emergency. However, the problems encountered in this difficult period should provide a useful lesson in adapting and improving the relevant legislation.

³¹ From 2021 in Finland the duration of paid parental leave will be up to 14 months with 164 days per each parent of which 69 days are to be transferable. Sweden already grants 240 days of paid parental leave to each parent.

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